

SERVED: November 20, 1992

NTSB Order No. EA-3727

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of October, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Dockets SE-10282
v.)	SE-10283
)	
CARL T. PFLANZER and)	
RANDY W. HETHERINGTON,)	
)	
Respondents.)	

OPINION AND ORDER

This case involves an appeal by respondent Hetherington from an initial decision of Administrative Law Judge William R. Mullins, issued orally at the conclusion of an evidentiary hearing held on March 15, 1990.¹ By that decision, the law judge

¹An excerpt from the transcript containing the initial decision is attached. The Administrator initially proceeded with certificate actions against both respondents identified above--on the flight in question Pflanzner acted as pilot-in-command and Hetherington acted as non-flying first officer. Prior to the

affirmed the Administrator's determination that respondent had violated sections 91.87(d)(2) and 91.9 of the FAR² during a passenger carrying flight bound for Seattle-Tacoma International Airport on June 15, 1988.³

In the complaint, the Administrator alleged that the flight in question was cleared to execute a bay visual approach into Runway 16R at Seattle-Tacoma, which was ILS-equipped; that such an approach called for a minimum altitude of 1,800 feet above

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hearing, Pflanzner entered into a settlement agreement with the Administrator, whereby he admitted to violations of §§ 91.75(a), 91.87(d)(2) and 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91) and the Administrator consented to a waiver of sanction for such violations under the Aviation Safety Reporting Program (ASRP). As the sole action pending before the Board is that against respondent Hetherington, he will be referred to as "respondent" in the remainder of this opinion and order.

²The pertinent FAR provisions, which have since been amended and recodified as 14 C.F.R. §§ 91.129 and 91.13(a), respectively, read as follows:

"§ 91.87 Operation at airports with operating control towers.

* * * * *

(d) Minimum altitudes. When operating to an airport with an operating control tower, each pilot of--

* * * * *

(2) A turbine-powered airplane or a large airplane approaching to land on a runway being served by an ILS [instrument landing system], shall, if the airplane is ILS equipped, fly that airplane over the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance from the clouds criteria requires interception closer in) and the middle marker.

§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Administrator initially ordered respondent's airline transport pilot (ATP) certificate suspended for 60 days for such alleged FAR violations. However, at the commencement of the hearing, counsel for the Administrator waived the proposed sanction under ASRP. Tr. 10.

Boeing Field; that the flight descended to approximately 400 feet above ground level approaching Boeing Field, which was below both that minimum altitude and the ILS glide slope for Runway 16R at Seattle-Tacoma; and that the flight presented a hazard to aircraft operating at Boeing Field, and endangered the lives and property of others. It has been conceded that the descent toward Boeing Field was the result of a misidentification of that airport as Seattle-Tacoma. That descent was terminated and a missed approach was executed after this mistake was realized.

Respondent has, in connection with his appeal, contended that no violation of FAR section 91.87(d)(2) occurred because the missed approach had been commenced before the aircraft reached the outer marker for Seattle-Tacoma Runway 16R.⁴ Insofar as the alleged section 91.9 violation is concerned, respondent maintains that he was performing duties which required his attention to be focused entirely inside the cockpit when the incident occurred. Thus, he asserts that the incident did not result from any carelessness on his part.

The Administrator has submitted a reply brief, in which he

⁴With respect to the § 91.87(d)(2) charge, respondent also avers that the law judge erred in finding, solely on the basis of information appearing in the settlement agreement between the Administrator and Captain Pflanzner (Ex. J-1), that the glide slope called for a minimum altitude of 1,800 feet at the outer marker. In addition, respondent maintains that he should be absolved from liability under § 91.87(d)(2) because he was not flying the aircraft at the time of the incident. In view of our disposition of the § 91.87(d)(2) charge, infra, based on the contention set forth above, we need not address these further assertions advanced by respondent in this decision.

urges the Board to affirm the law judge's initial decision.

Upon consideration of the briefs of the parties and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require that the Administrator's order and the law judge's initial decision be reversed as to their finding of a section 91.87(d)(2) violation and affirmed as to their finding of a section 91.9 violation. Accordingly, respondent's appeal will be granted in part and denied in part.

With respect to the section 91.87(d)(2) charge, we have observed that both respondent and Captain Pflanzner indicated at the hearing that the aircraft's descent had been terminated and a missed approach commenced before the flight reached Boeing Field, where the outer marker for Seattle-Tacoma Runway 16R is located.⁵ Such testimony is corroborated by a series of charts depicting the aircraft's flightpath, which indicate that the aircraft, which was flying in a southeasterly direction, had descended to 400 feet mean sea level (MSL) approximately one nautical mile (NM) northwest of Boeing Field's runway, but began a climb before reaching the runway.⁶ Thus, the flight was no longer "approaching to land" at an ILS-equipped runway when it

⁵According to relevant approach plates (Exs. C-4 and A-1), the outer marker is located abeam of Boeing Field's only runway.

⁶Ex. C-2. These charts, which reflect altitudes of 500 feet MSL before the aircraft reached Boeing Field's runway and 1,800 feet MSL between the center and far end of that runway, were created by an FAA information specialist using information from its continuous data recording system.

arrived at the outer marker. For this reason, we do not believe that the flight in question was conducted in violation of FAR section 91.87(d)(2).⁷

Turning to the section 91.9 allegation, the Board is of the opinion that respondent must share in the responsibility for the aircraft's initial descent toward Boeing Field, which resulted from the misidentification of that airport as Seattle-Tacoma and caused a breach of standard air traffic separation in the area.⁸

In this regard, we note that the crew conducted an in-flight briefing of the bay visual approach prior to commencing that procedure. During that briefing, the fact that the approach pattern would take the flight over Boeing Field was mentioned.⁹ Moreover, visibility was good at the time,¹⁰ and respondent has related that he had been able to see both Boeing Field and

⁷The fact that Captain Pflanzner admitted to a violation of FAR § 91.87(d)(2) in his settlement agreement is immaterial to this determination, as the captain abandoned his appeal of the Administrator's order by entering into that agreement. With respect to respondent, the Administrator remained obligated to establish the existence of a § 91.87(d)(2) violation by a preponderance of the evidence. For the reasons stated above, we believe the Administrator has failed to do so.

⁸Boeing Field is located approximately 5 NM northwest of Seattle-Tacoma. See Ex. C-4. According to an FAA aviation safety inspector who testified at the hearing, the bay visual approach into Seattle-Tacoma Runway 16R calls for a minimum altitude of 1,800 feet over Boeing Field in order to provide for adequate vertical separation between aircraft executing that approach and lower flying aircraft operating into and out of Boeing. See Tr. 50.

⁹Tr. 89. The overflight of Boeing Field was to occur during final approach. See Exs. C-4, R-1.

¹⁰See Ex. C-3, Tr. 82.

Seattle-Tacoma from the right seat of the cockpit during the downwind and base legs of the approach.¹¹ Thus, prior to the incident, respondent should have been cognizant of the fact that the two airports were in close proximity and should, therefore, have also been aware that an acute degree of care and attention was required in order to assure that a descent toward the wrong airport did not occur.¹²

According to Captain Pflanzer, the flight had descended to 3,200 feet following execution of the inbound turn, in accordance with its approach clearance, when he saw what he thought was Seattle-Tacoma and, as a result, ordered respondent to immediately configure the aircraft for landing and go through the final landing check list. The mistaken descent toward Boeing Field followed. Respondent maintains that, during the period of about one and one-half minutes from the time he received Captain Pflanzer's orders until the time the captain discovered that something was awry, those commands required him to focus his attention inside the cockpit, making it impossible for him to ascertain that the aircraft was approaching the wrong airport.

The Board is not persuaded by this argument. In the first place, we do not believe that the tasks assigned by Captain

¹¹Tr. 136-38. Captain Pflanzer was unable to see either airport from the cockpit's left seat during those phases of the approach. Id. 82, 88.

¹²The degree of care required by respondent in this regard was especially high both because he had not previously flown into Seattle-Tacoma (Tr. 135) and because he is an ATP certificate holder. See Administrator v. Ferguson and Bastiani, 3 NTSB 3068, 3070 (1980), affirmed 678 F.2d 821 (9th Cir. 1982).

Pflanzer were so extensive or extraordinary in nature as to have required their performance to the exclusion of respondent's routine navigational duties as a non-flying first officer. Those duties included monitoring cockpit instruments and observing conditions outside the aircraft to assure that nothing was amiss.¹³ Additionally, we note that warning flags in both of the aircraft's ILS instrument gauges had been observed by respondent before the time Captain Pflanzer gave him the final approach commands.¹⁴ We therefore believe that respondent had an ample opportunity to observe signs indicative of a problem with the aircraft's approach which, if heeded, might have averted the flight's mistaken descent toward Boeing Field.¹⁵ Consequently, we

¹³See Ex. C-5. We believe that the proper performance of such duties may well have uncovered the captain's mistaken identification of Boeing Field as Seattle-Tacoma. In this regard, we note that, in addition to being located several miles down the bay visual approach flightpath from Boeing, Seattle-Tacoma has two parallel runways whose heading differs from that of the Boeing's sole runway by approximately 30 degrees. See Exs. C-4, R-1. Moreover, Seattle-Tacoma, at 429 feet MSL (see Ex. R-1), is located at a higher elevation than both Boeing Field and the aircraft's minimum altitude prior to the commencement of the missed approach. The descent toward Boeing Field, therefore, also reflects respondent's failure in his duty (see Ex. C-5, Tr. 59) to make appropriate altitude callouts.

¹⁴Tr. 83-84, 126-27. Although respondent maintains that this furthered the need for him to focus his attention within the cockpit during the period in question because he was required to spend time checking to see if the ILS instruments were tuned to the proper frequency, it appears that the captain did not ask him to configure the aircraft for landing or go through the final landing check list until this was accomplished. Id. As the evidence indicates that the ILS instruments were found to have been properly tuned, the Board must wonder why a final approach was subsequently commenced.

¹⁵In this regard, this case differs from Administrator v. Galle and Pfenninger, NTSB Order EA-2718 (1988), where we found

are of the opinion that the law judge did not err in finding respondent in violation of FAR section 91.9.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted with respect to the law judge's determination that he violated FAR section 91.87(d)(2);
2. Respondent's appeal is denied with respect to the law judge's determination that he violated FAR section 91.9;
3. The initial decision is reversed to the extent that it affirms the Administrator's finding of an FAR section 91.87(d)(2) violation; and
4. The initial decision is affirmed to the extent that it affirms the Administrator's finding of an FAR section 91.9 violation.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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that a non-flying first officer did not have an opportunity to detect, during a 5 to 10 second period, that his captain had maneuvered onto the wrong taxiway while he was performing a pre-takeoff checklist.